

2012 IL App (1st) 110470-U

FIRST DIVISION  
FILED: DECEMBER 17, 2012

No. 1-11-0470

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 3096
	)	
ALIT KHAN,	)	Honorable
	)	John J. Scotillo,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Cunningham and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* Judgment entered on theft by deception conviction affirmed over defendant's claims that the restitution order was void and that his sentence was excessive.

¶ 2 Following a bench trial, defendant Alit Khan was found guilty of theft by deception, sentenced to 15 years' imprisonment, and ordered to pay \$250,000 in restitution to the victim, Gary Siegel. On appeal, defendant contends that the trial court's restitution order was improper because the court never stated on the record how the amount of \$250,000 had been calculated

and the amount of Siegel's actual out-of-pocket losses. Defendant also contends that his sentence was excessive. We affirm.

¶ 3 As relevant to this appeal, the record shows that in February 2009, Gary Siegel worked for a real estate development company owned by Seth Harris. Siegel's job was to raise money for new developments by finding investors. Siegel met defendant at a business meeting where defendant told Harris that he would invest \$10 million in the company. Shortly thereafter, several people, including Siegel, defendant, and Harris went out to dinner where they consumed an extravagant meal, and drank several cocktails, including a \$1,300 bottle of scotch or whisky, and bottles of Dom Perignon champagne. Following the meal, no one ever saw a bill, and everyone assumed defendant paid the entire bill.

¶ 4 In late February 2009, Harris' company went out of business, and Siegel was unemployed. About a week later, defendant invited Siegel over to his house in Lake Forest where defendant discussed hiring Siegel. On March 3, 2009, defendant offered Siegel an "employment partnership," under which Siegel would be the employee and defendant would be considered the company. Siegel verbally agreed to the terms. From March 3 through the end of April 2009, Siegel charged several transactions to his credit cards at the instruction of defendant, who promised to reimburse Siegel for these alleged business expenses. Despite the fact that on multiple occasions during their relationship defendant told Siegel that he had "wealth beyond imagination" and showed Siegel what purported to be his financial statements, defendant never reimbursed Siegel, who ultimately called the authorities. Police arrested defendant, and he was charged with theft by deception and multiple counts of forgery.

¶ 5 At trial, Gary Siegel testified that after agreeing to work for defendant, he began paying for alleged business items with his credit card, based on the assumption that he would be reimbursed by defendant. Pursuant to instructions from defendant, Siegel charged to his credit

1-11-0470

card several purchases including gifts, bottles of alcohol, clothes, and a Mercedes Benz. Siegel bought a Lamborghini and put down a partial payment of \$10,000 on his credit card. Defendant took possession of the Lamborghini, and Siegel ultimately lost \$20,000 on the car because defendant wrecked it 20 minutes after purchase and it had to be towed back to the dealership. Siegel also rented a private jet that cost \$21,597.37. Defendant wrote Siegel checks to cover these expenses and to pay Siegel's salary. Defendant also wrote an unspecified number of checks to pay for Siegel's mortgage, other credit card bills, a home equity line, and condominium payments. None of the checks defendant wrote to Siegel were honored, and Siegel was responsible for all of the accounts.

¶ 6 Siegel testified that he and defendant went on a business trip in Florida in April 2009 to talk to a potential investor regarding a real estate deal. They stayed at a hotel, which Siegel put on his credit card. The hotel did not accept the first two credit cards Siegel attempted to use because the cards were closed. When Siegel called the credit card companies, he was informed that the checks from defendant had bounced. The hotel accepted a third credit card that Siegel had not yet used. When Siegel checked out of the hotel a few days later, the bill was \$13,000, which included \$2,000 or \$3,000 for the rooms, and the rest of the money was spent by defendant who treated people to alcohol and food.

¶ 7 Following the Florida trip, Siegel had no money and gave defendant one last chance to pay him back before he called the police. Defendant, Siegel, and a third person met at a Starbucks in Northbrook where defendant gave Siegel receipts for cashier's checks in the amounts of \$77,000 and \$50,000, which were allegedly deposited towards Siegel's credit card account. Those checks were not honored by the bank. According to Siegel's testimony, \$127,000 had been charged to one of the credit cards, and he ultimately lost about a quarter of a million dollars.

¶ 8 After Siegel testified on direct examination, the trial court conducted its own examination, for clarification, as follows:

"THE COURT: Okay. I have a question before you go further. The credit card was \$127,000, approximately \*\*\*. Now, the other hundred thousand, was, what you said he gave you money for your mortgage, is that correct, for your home equity loan?

SIEGEL: Yes.

THE COURT: Those are things that you owed?

SIEGEL: There was another credit card that was about sixty-five of the other hundred.

THE COURT: Sixty-five hundred of the other credit card?

SIEGEL: Yes."

¶ 9 The parties stipulated to the testimony of Brian Rozanski, an investigator employed by Citibank. Rozanski was assigned to investigate fraudulent activity on Siegel's Citibank Mastercard. The following payments were made from defendant's account to Siegel's credit card, for a total of \$272,215.07: \$6,615.07 on April 3; \$26,000 on April 7; \$13,000 on April 8; \$19,000 on April 13; \$10,600 on April 14; \$20,000 on April 15; \$50,000 on April 16; \$77,000 on April 27; and \$50,000 on April 28. None of these checks were honored because defendant's account was closed.

¶ 10 At the close of evidence, the trial court found defendant guilty of theft by deception beyond a reasonable doubt. At sentencing, defendant stated in allocution that Siegel was not an innocent victim and benefitted from a wealthy lifestyle. He also indicated that \$30,000 to \$46,000 of the \$250,000 constituted cash advances that went to Siegel's account. After defendant's statement, the court asked the State to confirm the actual amount of money that

Siegel lost due to defendant's actions, and the State responded that the amount was \$250,000. The trial court then stated that it had considered the factors in aggravation and mitigation, the arguments of counsel, defendant's statement in allocution, and the facts of the case. The court also stated that defendant's actions were egregious, calculated, and bold, and that he took advantage of Siegel's naivete. The court concluded that defendant, like the worst of criminals, preyed on the most innocent of victims and thus required the maximum prison term of 15 years. In addition, the court imposed on defendant the maximum fine of \$25,000 and ordered restitution of \$250,000.

¶ 11 On appeal, defendant contends that the trial court's \$250,000 restitution order against him was improper where the court never stated on the record how that amount had been calculated and the amount of Siegel's actual out-of-pocket losses. Defendant acknowledges that he did not raise this issue below, but maintains that the restitution order was void because it exceeded the court's statutory authority, and therefore, can be reviewed at any time. He also claims that the issue may be reviewed under the second prong of the plain error doctrine, *i.e.*, where the error is so fundamental that the defendant was denied a fair trial. The State responds that there is no plain error, and that the court properly exercised its discretion in ordering restitution.

¶ 12 A restitution order that is not authorized by statute is void, and can be challenged at any time. *People v. Fouts*, 319 Ill. App. 3d 550, 552 (2001). We must review the order to assess whether it is actually void. *People v. Balle*, 379 Ill. App. 3d 146, 151 (2008). For the reasons that follow, we find that it is not.

¶ 13 The restitution statute authorizes restitution for "actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge." 730 ILCS 5/5-5-6(b) (West 2010). Here, the trial court ordered \$250,000 in restitution based on the representations made by Siegel regarding his losses. The order was also based in large part on the stipulated testimony of

Rozanski, which detailed the payments made from defendant's account to Siegel's credit card, none of which were honored because defendant's account was closed. Defendant maintains that there was no reliable evidence that Siegel suffered an actual loss of \$250,000, and that only the losses attributable to one credit card, which totaled \$127,000, was detailed with any specificity.

¶ 14 In support of this argument, defendant asserts that there was no testimony regarding the remaining portion of the \$250,000 of losses, except that other accounts belonging to Siegel existed. Defendant points out that Siegel only testified that defendant paid his mortgage bills, credit card bills, a home equity loan, and wrote a check for \$40,000 on a condominium he owned. Defendant maintains that it is unclear from this testimony how all of this added up to \$250,000 in losses. He also points to the court's question to the State during sentencing, "in my notes from the trial there was a lot of figures that Gary Siegel was out of money, and I'm wondering if you have the total of that \*\*\*." In response, the State indicated, "\$250,000 the victim is out." Defendant appears to argue that this exchange shows that the trial court never made any calculation when it assessed the restitution order.

¶ 15 Defendant, however, ignores the fact that besides Siegel's testimony, Rozanski's stipulated testimony detailed the bad checks that defendant wrote to Siegel, which totaled over \$270,000. Moreover, outside of defendant's allocution where he indicated that approximately \$40,000 of the \$250,000 constituted cash advances that went to Siegel's account, he did not object to the representations made by Siegel at trial, nor attempt to rebut them, and thus forfeited any such issues. *People v. Day*, 2011 IL App (2d) 091358, ¶ 48. Waiver aside, the court assessed defendant \$250,000 which reflected the actual losses sustained by Siegel based on his and Rozanski's testimony.

¶ 16 In reaching this conclusion, we find *People v. Guajardo*, 262 Ill. App. 3d 747 (1994), relied on by defendant, distinguishable from the case at bar. In *Guajardo*, 262 Ill. App. 3d at

769, the defendant argued that the court erred in ordering him to pay \$750 in restitution to a sexual assault victim for counseling because the State presented no evidence of the cost of counseling. The court agreed with defendant because the trial court made no determination regarding what the actual costs were, and thus remanded the cause for a proper determination of the amount of restitution to be ordered. *Guajardo*, 262 Ill. App. 3d at 770-71. Here, in contrast to *Guajardo*, the record does in fact show how the court calculated the \$250,000 restitution order.

¶ 17 Defendant next contends that the trial court imposed a sentence that was excessive in light of his rehabilitative potential and lack of a prior criminal record. He specifically requests this court to exercise its authority under Illinois Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999), and reduce his sentence to a more appropriate term.

¶ 18 Initially, the State correctly asserts, and defendant concedes, that he has forfeited his sentencing claim by failing to object in the trial court and raise the issue in a postsentencing motion. *People v. McLaurin*, 235 Ill. 2d 478, 485 (2009). Defendant urges us to review the matter under the second prong of the plain error doctrine, which allows a reviewing court to remedy a "clear or obvious error" where the error was so serious that it denied defendant a substantial right. *McLaurin*, 235 Ill. 2d at 489. The defendant bears the burden of persuasion on whether plain error occurred (*People v. Herron*, 215 Ill. 2d 167, 187 (2005)), and the first step in plain error analysis is to determine whether a clear or obvious error existed (*McLaurin*, 235 Ill. 2d at 489)). For the reasons that follow, we find that no error occurred in this case.

¶ 19 Here, the offense of theft by deception is a Class 1 felony, with a possible sentencing range of 4 to 15 years. 720 ILCS 5/16-1(a)(2) (West 2010); 730 ILCS 5/5-4.5-30(a) (West 2010).

¶ 20 A trial court has broad discretion to determine an appropriate sentence, and a reviewing court may reverse only where the trial court has abused that discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). The reviewing court should not substitute its judgment for that of the trial court simply because it would have balanced the appropriate sentencing factors differently. *People v. Alexander*, 239 Ill. 2d 205, 214-15 (2010). A sentence within the statutory range does not constitute an abuse of discretion unless it varies greatly from the purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Henderson*, 354 Ill. App. 3d 8, 19 (2004). Where mitigating evidence is presented to the trial court, it is presumed, absent some indication to the contrary, other than the sentence itself, that the court considered it. *People v. Benford*, 349 Ill. App. 3d 721, 735 (2004).

¶ 21 The trial court clearly stated that it had considered appropriate factors in mitigation and aggravation. At defendant's sentencing hearing, the court stated:

"I've considered the other factors in aggravation and mitigation and the arguments of counsel, the defendant's statement in allocution, the facts of the cases, and the statutory factors in aggravation and mitigation. And I conclude that the defendant's actions were very egregious and very calculated and very bold. And while it's true the victim was unsophisticated \*\*\* the defendant took all advantage of that and of the victim's gullibility and his naivete; and the defendant, like the worst of criminals, preyed on the most innocent of the victim."

From these statements, it is clear that the trial court thoughtfully weighed the appropriate mitigating and aggravating factors and sentenced defendant to a term within the permissible sentencing range. We thus cannot find that the trial court abused its discretion.

1-11-0470

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 23 Affirmed.